

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRIS ADAMSON, et al.,

Plaintiffs,

v.

PIERCE COUNTY, et al.,

Defendants.

Case No. 3:21-cv-05592-TMC

ORDER REGARDING MAY 2, 2024
HEARING

On May 2, 2024, the Court held a hearing on the following motions:

(1) Plaintiffs' "Motion for Contempt for Fed. R. Civ. P. 37 Contempt Sanctions"
(Dkt. 142);

(2) Plaintiffs' "Motion Regarding Witness Tampering" (Dkt. 143);

(3) Defendants' "Motion for Protective Order" (Dkt. 145); and

(4) Plaintiffs' "Motion to File Schacht Calendar Entries Temporarily under Seal for In
Camera Review for Privilege and Ultimate Publication" (Dkt. 194).

This order restates the Court's oral rulings. To the extent there are any inconsistencies
with the Court's oral ruling, this order controls.

The Court ORDERS as follows:

- Plaintiffs' Motion for Contempt (Dkt. 142) is GRANTED in part and DENIED in part as follows:
 - Plaintiffs' request for a negative inference instruction is DENIED without prejudice to more specific arguments at trial.
 - Plaintiffs' requests to strike Defendants' affirmative defenses and for a determination of prejudice from the Court's dismissal of Schacht and Wist are DENIED.
 - The Court ORDERS in camera review of (1) the documents listed in Defendants' privilege log and (2) an unredacted version of the email from Jim Schacht to Brent Bomkamp on March 19, 2020 that appears at Dkt. 138-28. By Tuesday May 7, 2024, Defendants will provide to chambers via the Tacoma Courthouse Clerk's office (clearly marked for in camera review to avoid inadvertent filing on the docket) unredacted versions of these documents in hard copy or update the Court as to when they will be able to file these documents.
 - To alleviate any prejudice to Plaintiffs from the delays in Defendants' document production, the Court will allow supplemental briefing on the Motion for Summary Judgment (Dkt. 185) from both parties with respect to (1) evidence cited by Plaintiffs in their response to the Motion for Summary Judgment to which Defendants have objected as untimely disclosed, and whether any delays in disclosure were substantially justified and/or harmless under Federal Rule of Civil Procedure 37(c)(1), and (2) the effect of any documents produced through the in camera review on the claims at issue in the Motion for Summary Judgment. The Court will set the briefing schedule and page limits in its order following the in camera review.
- Plaintiffs' "Motion to File Schacht Calendar Entries Temporarily under Seal for In Camera Review for Privilege and Ultimate Publication" (Dkt. 194) is GRANTED. Plaintiff has submitted to the Court a hard copy of the calendar entries for review. The Court requests that by Friday May 3, 2024, Defendants file an index that clearly identifies which documents Defendants have already agreed may be used in the litigation, and the ones for which they are still asserting privilege.
- The Court reserves ruling on Defendants' "Motion for Protective Order" (Dkt. 145) pending the Court's in camera review of Mr. Schacht's calendar entries.
- Plaintiffs' Motion Regarding Witness Tampering (Dkt. 143) is DENIED.

1 Dated this 3rd day of May, 2024.

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4 Tiffany M. Cartwright
5 United States District Judge
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